

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SUSAN OTTELE and WILLIAM COLLIER, on their own behalf and on the behalf of the Estate of ADAM J. COLLIER, decedent.

Plaintiffs.

OSCAR MARTINEZ AND AARON
HODGES.

Defendants.

Case No. 1:22-cv-00187-JLT-CDB

**ORDER REQUIRING PLAINTIFFS TO
RESPOND TO DEFENDANTS' OBJECTIONS**

(Doc. 60)

SEVEN-DAY DEADLINE

This case has been referred to the undersigned for issuance of findings and recommendations to the assigned district judge on Defendants' motion for summary judgment (Doc. 57), pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022).

Upon further review of the parties' filings, the Court believes that an additional response from Plaintiffs is necessary. Plaintiffs' brief in opposition to the pending motion for summary judgment is accompanied by a medical report and declaration of Dr. James Lee. (Doc. 59-7). Dr. Lee's declaration serves as the basis in part for Plaintiff's Response to Defendants' Statement of Undisputed Facts in Support of Defendants' Motion for Summary Judgment ## 4, 5, 6, 18 (Doc. 59-2), as well as Plaintiff's Statement of Disputed Facts in Support OF Opposition to Motion for Summary Judgment ## 1, 4 (Doc. 59-3). In their reply brief, Defendants object to Dr. Lee's declaration for exceeding the scope of his Rule 26 report. (Doc. 60 p. 4).

Defendants specifically argue that the Court should not consider opinions set forth in Dr.

1 Lee's declaration that were not previously disclosed in his report under Rule 26(a)(2)(B).¹ The
2 undersigned notes that a failure to disclose information required by Rule 26(a)(2) implicates the
3 exclusionary rule of Rule 37(c)(1).

4 Generally, plaintiffs before this Court file a response to evidentiary objections that are
5 made in a moving party's reply. However, Plaintiffs have not responded to Defendants'
6 objections. Therefore, the Court will extend to Plaintiffs an opportunity to respond.

7 Accordingly, IT IS HEREBY ORDERED that Plaintiffs may file a response to
8 Defendants' objections to Dr. Lee's declaration within seven (7) days of entry of this Order.
9 IT IS SO ORDERED.

10 Dated: January 26, 2024


11 UNITED STATES MAGISTRATE JUDGE

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28 ¹ It also appears that the declaration was made after the close of expert discovery, thereby
implicating Rule 26(a)(2)(D).